



# Attorney General Chris Koster's Roundtable on Representative Policing



## Report & Recommendations

*St. Louis*  
*October 1, 2014*

*Kansas City*  
*October 14, 2014*

## **EXECUTIVE SUMMARY**

The Attorney General makes the following six recommendations, classified in categories of statutory changes and best practices:

### **Statutory Changes**

#### **RECOMMENDATION NO. 1**

The General Assembly should update the Sunshine Law to facilitate law enforcement's use of body-worn cameras

#### **RECOMMENDATION NO. 2**

A Law Enforcement Education and Scholarship Program should be established to remove economic barriers and promote diversity in policing

#### **RECOMMENDATION NO. 3**

The General Assembly should amend Missouri's outdated statutory defense of justification for use of deadly force

### **Best Practices**

#### **RECOMMENDATION NO. 4**

Municipalities must comply with the reporting and revenue limitations established by the Macks Creek law

#### **RECOMMENDATION NO. 5**

Law enforcement agencies should report employment statistics to POST, including statistics regarding representative policing

#### **RECOMMENDATION NO. 6**

A statewide task force should be formed to review Missouri's annual Vehicle Stops Report, including the types of data collected and penalties for noncompliance

## **RECOMMENDATION NO. 1**

### **The General Assembly should update the Sunshine Law to facilitate law enforcement's use of body-worn cameras**

The use of body-worn cameras by law enforcement officers is quickly becoming a tool to provide greater transparency and accountability for both officers and the public they serve. The significant benefits gained by the use of body-worn cameras must be balanced with protections to individual civil liberties and sensitivity to strained local government budgets when determining the accessibility and retention of data. Adoption of this technology must not lead to a new era of voyeurism and entertainment television at the expense of Missourians' privacy. The legislature should update Missouri's Open Records law to address the need for strong privacy protections.

Agencies using body-worn cameras report numerous benefits for law enforcement, including improved evidence collection, reduced negative behavior and violence, fewer complaints of police misconduct, greater officer accountability, and enhanced officer training through review of stops.<sup>1</sup> However, the agencies have also experienced some downsides, such as the increased expenses of equipment maintenance, cost of data storage, lack of clear policies regarding camera use, and concerns for privacy rights of citizens and police.<sup>2</sup>

Officers need clear policies regarding the required use of the cameras. Due to the cost of collecting and retaining data, agencies should have discretion to adopt policies they find appropriate, such as whether to limit recording to calls for service and law enforcement-related activities. Whatever policy is adopted, it should be posted publicly for full transparency. As a point of reference, Appendix A of this report contains a chart summarizing ten usage and retention policies that have been adopted by agencies of various sizes across the country.

Missouri's Open Records Law must also be updated to protect personal privacy and public safety. Law enforcement officers interact with people at some of their most challenging moments. Policies are needed to respect the dignity and privacy of, for example, a victim reporting domestic violence or sexual assault, or a terrified family working with police to find a missing child. Officers also need the cooperation of confidential informants or witnesses who may fear for their own safety. Given the sensitivity of privacy interests, video data in the possession of law enforcement should be considered closed records for law enforcement purposes, subject to existing

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<sup>1</sup> See Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum, 2014, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services; and *A Primer on Body-Worn Cameras for Law Enforcement*. U.S. Department of Justice National Institute of Justice, September, 2012.

<sup>2</sup> Miller, *Implementing a Body-Worn Camera Program; A Primer on Body-Worn Cameras for Law Enforcement*, U.S. DOJ.

statutory exceptions allowing access to persons involved in a recorded incident for purposes of investigation of any civil claim or defense, or to others by court order.

**Draft statutory language:**

610.100. 1. As used in sections 610.100 to 610.150, the following words and phrases shall mean:

(1) "Arrest", an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) "Arrest report", a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) "Inactive", an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) "Incident report", a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency;

(5) "Investigative report", a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties;

(6) "Mobile video recorder", any system or device that captures visual signals that is capable of installation in a vehicle or being worn or carried by personnel of a law enforcement agency and that includes, at minimum, a camera and recording capabilities.

2. Each law enforcement agency of this state, of any county, and of any municipality shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records.

(1) Notwithstanding any other provision of law, other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive.

(2) If any person is arrested and not charged with an offense against the law within thirty days of the person's arrest, the arrest report shall thereafter be a closed

record except that the disposition portion of the record may be accessed and except as provided in section 610.120.

(3) Notwithstanding any other provision of law, other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, data from mobile video recorders in the possession of law enforcement agencies are closed records.

3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures or guidelines for law enforcement investigations or prosecutions, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

4. Any person, including a family member of such person within the first degree of consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this subsection. Any individual, his or her family member within the first degree of consanguinity if such individual is deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property is involved in an incident, upon written request, may obtain a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section. Within thirty days of such request, the agency shall provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the law enforcement agency stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either order the record closed or order such portion of the record that should be closed to be redacted from any record made available pursuant to this subsection.

5. Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of the information contained in an investigative report of any law enforcement agency or data in the possession of a law enforcement agency from a mobile video recorder, which would otherwise be closed pursuant to this section. The court may order that all or part of the information contained in an investigative report or the data from a mobile video recorder be released to the person bringing the action. In making the determination as to whether information contained in an investigative report or data from a mobile video recorder shall be disclosed, the court shall consider whether the benefit to the person bringing

the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report or captured in the data from the mobile video recorder in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report or mobile video recorder data in question may be examined by the court in camera. The court may find that the party seeking disclosure of the investigative report or mobile video recorder data shall bear the reasonable and necessary costs and attorneys' fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the investigative report or mobile video recorder data was substantially unjustified under all relevant circumstances, and in that event, the court may assess such reasonable and necessary costs and attorneys' fees to the law enforcement agency.

6. Any person may apply pursuant to this subsection to the circuit court having jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest reports being unlawfully closed pursuant to this section. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has knowingly violated this section, the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of this section, the court may order payment by such officer or agency of all costs and attorneys' fees, as provided by section 610.027. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has purposely violated this section, the officer or agency shall be subject to a civil penalty in an amount up to five thousand dollars and the court shall order payment by such officer or agency of all costs and attorney fees, as provided in section 610.027. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the law enforcement officer or agency has violated this section previously.

7. The victim of an offense as provided in chapter 566 may request that his or her identity be kept confidential until a charge relating to such incident is filed.

## **RECOMMENDATION NO. 2**

### **A Law Enforcement Education and Scholarship Program should be established to remove economic barriers and promote diversity in policing**

The A+ Scholarship Program has made higher education accessible to thousands of Missouri students each year. The General Assembly should consider establishing a similar, but separate, program, with a new Law Enforcement Education and Scholarship Fund to assist low-income high-school students in pursuing law enforcement training. The program would provide a necessary boost to qualified, motivated students who are interested in a career in law enforcement but lack the resources to obtain the education and training they need to succeed. In turn, the program would encourage a broader

pool of qualified applicants, including qualified minority applicants, for law enforcement agencies statewide.

The initial goal would be to fund annually the training of 300 new law enforcement officers from low-income communities by making scholarships available to qualifying applicants who commit to serving the citizens of Missouri as peace officers.

**Draft statutory language:**

160.xxx. There is hereby established within the department of elementary and secondary education the “Law Enforcement Education and Scholarship Program,” to be administered by the commissioner of education. The purpose of the program shall be to encourage low-income students to pursue careers in law enforcement.

(1) As used in this subsection, unless the context indicates otherwise, the following terms mean:

(a) “Eligible student”, an individual who:

(i) Is a United States citizen;

(ii) Is a Missouri resident;

(iii) Attended a Missouri high school;

(iv) Achieved scores on an accepted standardized test of academic ability, including, but not limited to, the SAT, ACT, SCAT, that place the student at or above the fiftieth percentile;

(v) A high school rank at or above the fiftieth percentile;

(vi) Resides in a household which has an annual income less than or equal to one hundred fifty percent of the current federal poverty level or sixty percent of the state median income.

(b) “Law enforcement”, any police or sheriff’s department in Missouri, the Missouri State Highway Patrol, or any other official agency which is legally endowed with investigative and arrest powers.

(2) There is hereby created in the state treasury the “Law Enforcement Education and Scholarship Fund” which shall consist of all moneys that may be appropriated to it by the general assembly, and in addition may include any gifts, contributions, grants, or bequests received from federal, state, private, or other sources. The fund shall be administered by the department of elementary and secondary education. Notwithstanding the provisions of section 33.080 to the contrary, moneys in the fund shall not be transferred to the credit of the general revenue fund at the end of the biennium. Interest and moneys earned on the fund shall be credited to the fund. Moneys in the fund shall be used solely for the purpose of awarding scholarships under the provisions of this section.

(3) Within the limits of amounts appropriated, the department of elementary and secondary education shall make available up to three hundred, one-year scholarships each in an amount of six thousand six hundred dollars to low-income students for the purpose of encouraging their entry into professional law enforcement.

Such scholarships shall be available to eligible students seeking to participate in an accredited law enforcement training programs offered by any college, university, vocational or technical facility located in Missouri.

### **RECOMMENDATION NO. 3**

#### **The General Assembly should amend Missouri's outdated statutory defense of justification for use of deadly force**

Missouri's statutory defense of justification should be amended to track the constitutional requirements outlined by the United States Supreme Court. In *Tennessee v. Garner*, 471 U.S. 1 (1985), the United States Supreme Court concluded a law enforcement officer may use deadly force when necessary to prevent escape if a suspect "threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm."

Missouri's defense of justification statute is much broader, allowing a law enforcement officer to use deadly force when necessary to make an arrest for any felony or attempted felony. The felony need not be a violent one, the officer need not be in danger, and no warning is required.

#### **Draft statutory language:**

563.046. 1. A law enforcement officer need not retreat or desist from efforts to effect the arrest, or from efforts to prevent the escape from custody, of a person he or she reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. In addition to the use of physical force authorized under other sections of this chapter, a law enforcement officer is, subject to the provisions of subsections 2 and 3, justified in the use of such physical force as he or she reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

2. The use of any physical force in making an arrest is not justified under this section unless the arrest is lawful or the law enforcement officer reasonably believes the arrest is lawful.

3. A law enforcement officer in effecting an arrest or in preventing an escape from custody is justified in using deadly force only:

(1) When deadly force is authorized under other sections of this chapter;

or

[(2) When he or she reasonably believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested:

(a) Has committed or attempted to commit a felony; or



(b) Is attempting to escape by use of a deadly weapon; or  
(c) May otherwise endanger life or inflict serious physical injury unless arrested without delay]

(2) When he or she reasonably believes that such use of deadly force is necessary to prevent escape, and:

(a) The officer has probable cause to believe the person to be arrested poses a threat of serious physical injury to the officer or another person, or

(b) the officer has probable cause to believe the person to be arrested has committed a felony involving the infliction or threatened infliction of serious physical injury.

4. The defendant shall have the burden of injecting the issue of justification under this section.

- *Technical Note: The statute was amended in SB 417, rewriting major portions of the state's criminal code, with an effective date of January 1, 2017. Both the current version and the version in SB 417 should be repealed, and a new version reenacted with an emergency clause.*

#### **RECOMMENDATION NO. 4**

**Municipalities must comply with the reporting and revenue limitations established by the Macks Creek law**

Section 302.341.2, commonly known as the Macks Creek law, was enacted to protect Missourians from predatory traffic ticketing. Currently, the law prohibits any municipality from receiving more than 30 percent of its annual operating revenue from fines and court costs for traffic violation. Any traffic-related fines or costs received in excess of 30 percent must be turned over to the director of revenue to be distributed among local school districts.

To ensure compliance, the Macks Creek law requires every municipality to include in its annual financial report to the state auditor the percentage of its general operating revenue attributable to fines and court costs for traffic violations. If a city, town or village fails to submit an accurate and timely report to the auditor, or fails to remit excess fines to the director of revenue, its municipal court loses jurisdiction over traffic-related offenses until the deficiency is corrected.

Numerous municipalities have taken a casual approach to compliance with the reporting requirements. In December 2014, this office sued 13 municipalities in St. Louis County to enforce the Macks Creek law. Since that time, six of those have come into compliance, while another two municipalities voluntarily paid over \$200,000 combined excess revenue to the state. Four more municipalities were added to the lawsuit in January 2015.

The problem of non-compliance is not limited to St. Louis County, however – and compliance must begin with accurate reporting. Municipalities across Missouri should not wait to be sued to follow the law.

The Missouri Attorney General's Office will continue to work aggressively, in coordination with the state Auditor, to monitor Missouri municipalities compliance with the Macks Creek law, and to file suit, when necessary, to effectuate the legislature's intent.

#### **RECOMMENDATION NO. 5**

##### **Law enforcement agencies should report employment statistics to POST, including statistics regarding representative policing**

Currently, the Department of Public Safety does not track the racial makeup of police departments in Missouri, making it nearly impossible to assess the level of progress of minority participation in law enforcement. To address this deficiency, the Department of Public Safety should require departments to annually report employment statistics to POST regarding the race and/or ethnicity of full-time certified officers within a department.

#### **RECOMMENDATION NO. 6**

##### **A statewide task force should be formed to review Missouri's annual Vehicle Stops Report, including the types of data collected and penalties for noncompliance**

Section 590.650 authorizing Missouri's annual vehicle stops report was enacted in 2000. Since that time, it has been amended twice: in 2001 to repeal the annual sensitivity training requirement, and in 2004 to exempt lawfully conducted sobriety checkpoints from reporting requirements.

A statewide task force should be created to consider improvements to make the annual report more meaningful. Task force recommendations should focus on the type of data collected in order to improve the state's analysis of vehicle stop patterns. Furthermore, the task force should suggest options to strengthen penalties for failure of individual departments to participate in the vehicle stops reporting process.

## Appendix A

### Body Camera Policies Nationwide

Institution	Release Policy	Retention Policy
Fort Collins, CO	A resident can personally request to see their own contact with an officer. Authorities handle other requests on a case-by-case basis.	Recording of non-event retained 7 days; incident, 30 days; traffic stops, 180 days. Once video becomes part of a case, treated same as other evidence.
Spokane, WA	In Washington state, public disclosure laws do not they require that the person requesting have any connection to the information being requested. A Washington State Supreme Court ruling in June 2014 required the Seattle Police Department to honor a dash-cam video request made by a local news organization, placing police video requests under the umbrella of the state's Public Records Act.	Recorded media stored in a digital management system from which litigation, criminal prosecution or an administrative investigation is reasonably possible will be retained until all pending litigation, administrative investigations or criminal prosecution is resolved, including exhaustion of the appeals process. Thereafter, they will be maintained and destroyed in accordance with the Washington State Law Enforcement Retention Schedule. All other recordings will be deleted or destroyed after 45 days.
Bay Area Rapid Transit Police Department (CA)	No info from department. See CA policy with Rialto below.	Infraction violations retained for 2yrs; detentions, 2yrs; service to citizens, 1yr; cold report, 1 year; arrest, until manually deleted; outside assist, 1yr; consensual contacts, 1yr; sick or injured patrons, 3yrs; statements, until manually deleted; use of force, until manually deleted; unattended death/homicide, until manually deleted; testing/accidental, 30 days.
Denver, CO	Follows the evidence and records disclosure policy within the department, on a case-by-case review. The Colorado Open Records Act (C.R.S. 24-72-201 et seq.) allows citizens to access public records by request. Public records include all writings that are made, maintained, kept or held by entities that are subject to the Colorado Open Records Act for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.	Unless flagged for evidentiary value, recordings will be stored for one year and then deleted.
Duluth, MN	Follows the procedures outlined in the Minnesota Government Data Practices Act (Section 13.03). "All government data collected, created, received, maintained or disseminated by a government entity shall be public unless classified by statute, or temporary classification pursuant to section 13.06, or federal law, as nonpublic or protected nonpublic, or with respect to data on individuals, as private or confidential."	Uncategorized recordings are retained for 60 days; arrest, citation, and charge, 90 days after sentencing; pending review, until manually deleted; all others follow the departmental evidence retention policy.
Las Vegas, NV	Nevada law allows for the public to request to inspection and/or copies of public records. As general guidance for release of video/audio, the following recordings are not a public record: recorded evidence, recordings of juvenile offenders, recordings obtained within a non-public area (home or non- public area of a business), photographs of police officers unless the officer has consented in writing, video/audio recordings depicting a victim of sexual assault in such a way that their identity may be ascertained, a recording containing data of the report or investigation of abuse, neglect, exploitation or isolation of older or vulnerable persons, recordings of persons whose identities are confidential under other laws, and recordings subject to legitimate privacy interest of the person(s) depicted.	Recordings related to Officer Involved Shooting/Deadly Force/Homicide retained for 7 Years; Felony/GM Arrest 2 Years; Misdemeanor Arrest or Citation 1 Year; Misdemeanor Citation 1 Year; Traffic Citation with violation captured 120 Days; Use of Force (Low Level/Intermediate) 90 Days, if arrest is made, arrest retention schedule overrules; Pursuit 90 Days, If arrest is made, arrest retention schedule overrules; Uncategorized (no tag) 45 Days
Phoenix, AZ	Arizona Public Records Law mandates public records be open to inspection by any person at all times during office hours, with certain exceptions. Lake v. City of Phoenix recently established that digital meta-data, attached to files stored in any electronic form are considered part of that document and are thus subject to open records requests. Exceptions to open records law include release of a record that would constitute an invasion of personal privacy not outweighed by the public's right to know, and disclosure of a record when detrimental to the best interests of the state.	All media that is captured during the pilot program will be retained by the Phoenix Police Department for a minimum of one year following the date it is recorded. Captured video may be retained for longer periods in the event the video is the subject of a litigation hold, a criminal case, part of discovery, etc.



Rialto, CA	Requests are processed in accordance with federal, state, local statutes and Departmental policy (public records act, etc.). Public records in the California Public Records Act are defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Writing defined by the CA AG as "Any means of recording information including paper, audio tape, video tape, compact disc, DVD, computer diskette, computer hard drive, etc."	Sorts into categories but no specifics on retention schedules.
Salt Lake City, UT	Access to video files is governed like any other SLCPD document through the Government Records Access Management Act (GRAMA - 63-2-101 etseq.). Documents created by public bodies in Utah are open for inspection by any member of the public. Documents that are considered exempt from open records laws include private information about individuals and government employees, health records of individuals, and records that are protected because if released they may result in security problems or financial speculation, unfair competition, or financial instability.	Retention of video files varies based on type of crime and court needs. Most categories require a 1-3 year retention.